



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

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ATTORNEY WORK PRODUCT

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PRE-REFERRAL LITIGATION REPORT
Medley Farms Superfund Site
Gaffney, South Carolina

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I. Background

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A. Site Description

The Medley Farm Superfund Site (the "Site") is located in Cherokee County, South Carolina, and encompasses approximately seven acres of a 61.9-acre tract of land owned by Mr. Ralph Medley. The Site is located off Burnt Gin Road (Highway 72), about six miles south of the City of Gaffney, South Carolina.

The Site is situated on top of a small hill, which is itself relatively flat, but the adjacent land slopes off steeply to the east and south. Surface water drainage from the Site flows into Jones Creek, located along the eastern property boundary, which flows into Thicketty Creek, which then drains into the Broad River.

Land use in the vicinity of the Site is primarily agricultural (farms and cattle) and light residential. Approximately 3,300 persons reside within a four-mile radius of the Site, approximately 300 people live within one mile of the Site, and 120 people obtain drinking water from private wells within a three mile radius of the Site. The nearest residence, that of the owner, is about 100 feet from the Site.

The Medley Farm Site is owned by Ralph C. Medley, who acquired the property from William Medley in 1948 under a Warranty Deed, dated June 14, 1948, recorded in the real estate records of Cherokee County, S.C., in Book 3-0, beginning at page 204. Until the early 1970's, the Medley property was maintained as woods and pasture land. From approximately 1973 until 1978, several area textile, paint, and chemical manufacturing firms paid to dispose of their industrial wastes on the Medley property.

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B. The Removal Action and Litigation Related Thereto

In May 1983, in response to the anonymous call of a local citizen who witnessed the disposal of barrels on the Medley property, the South Carolina Department of Health and Environmental Control ("DHEC") inspected the Site and observed approximately 2,000 55-gallon drums in a range of deteriorating conditions. The drums were piled randomly over the area and a chemical odor was noted. A number of shallow excavations were observed which contained discolored standing water. In addition, the DHEC staff noted areas of distressed vegetation where possible drum discharges may have occurred. DHEC personnel took samples at the Site on May 19, 1983, analysis of which showed high concentrations of a number of volatile organic compounds, PCBs and base neutral extractable compounds. DHEC notified EPA of the situation at the end of May 1983 and EPA Region IV thereafter also investigated and sampled wastes, soil, and water at the Site.

EPA performed an emergency removal action at the Site in June and July 1983. During this operation, EPA removed a total of 5,383 drums of waste, 2,132 cubic yards of refuse and contaminated soil, and 70,000 gallons of water and sludge from six small waste lagoons on the Site. The lagoon areas were then backfilled and graded. Testing of the solid and liquid waste materials removed from the property indicated that the primary chemicals of concern at the Site are volatile organic compounds ("VOCs"). Samples collected from adjacent homeowners' wells were found to contain methylene chloride.

On June 1986, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607 ("CERCLA"), the United States filed a complaint in a cost recovery action against the owner of the Site, Ralph C. Medley, and the following other members of his family: Clyde Medley, Grace Medley and Barry Medley (individually and d/b/a Medley Concrete Works). The complaint also named the following generators, who were believed to have shipped waste to the Site, as defendants:

1. Milliken and Company
2. National Starch and Chemical Corporation
3. Unisphere Chemical Corporation.

In a third-party complaint, the original defendants alleged that the following companies also had sent hazardous substances to the Site and were liable as generators under CERCLA Section 107, 42 U.S.C. § 9607:

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1. ABCO Industries, Inc.
2. BASF Corporation
3. Ethox Chemicals, Inc.
4. Polymer Industries, a division of Morton-Thiokol
5. Tanner Chemical Company.

After conducting approximately six months of discovery, the government moved for partial summary judgment on the issue of the defendants' liability. By way of an order dated November 5, 1986, the Court granted the government's motion for summary judgment, finding the defendants Ralph C. Medley and Clyde Medley liable for all costs incurred by the United States in responding to the release or threatened release of hazardous substances at the Site, as well as for any future response costs the government might incur.

After several months of negotiations, the United States and the generator defendants reached an agreement requiring the payment of \$560,000, which was approximately 83% of the past costs incurred by the United States in the removal action. The agreement was memorialized in a Consent Decree dated June 30, 1987, filed with the United States District Court for the District of South Carolina, Spartanburg Division (Civil Action No. 86-252-3). The Consent Decree did not include the Medley family owner/operators, since they would not agree to contribute more than \$20,000 to the settlement and the generator defendants were unwilling to surrender their contribution rights for such a small settlement amount.

Thereafter, the generators and the United States filed a Stipulation of Dismissal with the District Court, which provided for the dismissal of the United States' suit against the Medleys, both individually and d/b/a Medley's Concrete Works, for the response costs incurred by the government up to and including the date of entry of the Consent Decree. Since the Stipulation of Dismissal was without prejudice and it provided for the tolling of the statute of limitations, the United States preserved its ability to pursue the Medleys at a later time.

C. The Remedial Action

The Medley Farm Site was evaluated by EPA in June 1985 using the Hazard Ranking System ("HRS"). A migration score of 31.58 was assigned based entirely on the ground water route. The Medley Farm Site was proposed for addition to the National Priority List (the "NPL") in June 1986. The Site was placed on the NPL in March 1990.

EPA sent general notice letters, which included information requests pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604, in 1983 to 22 parties. The vast majority of these companies were identified by drum labels found at the Site. In response to the

information requests, most of the companies alleged that they had never had any contact or dealings with the Site or the owners/operators thereof and that their product drums must have been re-used by their customers without removing the labels.

In May 1985, EPA sent additional general notice and information request letters to eight parties which were identified through interviews with the owners and operators and other witnesses as potentially responsible parties.

In October 1985, EPA sent demand letters to Unisphere Chemical Corp., Milliken Chemical Company, National Starch and Chemical Company, and each of the Medleys. Although no copies exist in Region IV files, it is likely that demand letters were also sent to other parties involved in this case.

In July 1987, EPA sent special notice letters pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 122(e), to initiate the moratorium period in connection with the conduct of the RI/FS to the following parties:

1. Unisphere Chemical Company
2. Milliken Chemical Company
3. Tanner Chemical Company
4. Charles S. Tanner Co.
5. Polymer Industries
6. National Starch and Chemical Company
7. Ralph C. Medley
8. Grace Medley
9. Clyde Medley
10. Barry Medley
11. Medley's Concrete Works
12. Ethox Chemicals, Inc.
13. BASF Corp.
14. ABCO.

A steering committee of PRPs was formed following the issuance of the special notice letters. The steering committee has at all times been chaired by the Atlanta law firm of King & Spalding, which represents National Starch and Chemical Company. The steering committee has as its members the following companies in addition to National Starch: Ethox Chemicals, Milliken and Co., ABCO, Tanner Chemical Company, Polymer Industries, a division of Morton-Thiokol, and BASF Corp. These companies represent all of the PRPs listed above who received special notice letters except Unisphere Corporation, which is believed to be defunct, and Charles S. Tanner Co., which was purchased by National Starch and Chemical Company.

The steering committee made a good faith offer to conduct the RI/FS by means of a letter to Region IV dated November 2, 1987. The parties thereafter entered into an Administrative Order by Consent, dated January 29, 1988, for the conduct of the RI/FS.

The companies contracted Sirrine Environmental Consultants, an environmental engineering firm in Greenville, South Carolina, to develop the work plan and other supporting documents. EPA approved Sirrine's RI/FS work plan in August 1988. The PRPs submitted the draft RI report to the Agency in March 1990 and a revised draft of the RI and a draft FS were submitted in December 1990. The final RI and FS were approved by EPA in February 1991.

EPA drafted the Proposed Plan and distributed it for public review and comment on February 12, 1991. (See attachment ____). The public comment period officially commenced on that date, which is also the date when the Administrative Record was sent to the information repository. EPA held a public meeting at the Gaffney High School Cafeteria in Gaffney, South Carolina on February 12, 1991. EPA anticipates signing the Record of Decision in April 1991 and would like to send special notice letters to all PRPs to commence RD/RA negotiations shortly thereafter.

III. Evidence Against the PRPs

A. The Owner/Operators

In June 1985, Versar, Inc. completed the Medley Site Final Potentially Responsible Party Report. (See Attachment ____). This report identifies Ralph C. Medley as the sole owner of the Site at all relevant times and his relative Clyde Medley as an operator of the Site. In cost recovery litigation in United States District Court, the United States obtained a declaration of liability against Ralph C. Medley and Clyde Medley (see Attachment ____). Region IV is still investigating the involvement by other members of the Medley family, including Grace Medley and Barry Medley, individually and d/b/a Medley Concrete Works. Region IV has requested that the Department of Justice retrieve its files related to the cost recovery litigation so as to determine if deposition or interrogatory evidence exists implicating these other family members as PRPs.

Region IV is also currently attempting to establish the financial ability of the Medleys to pay for or perform a portion of the remedial action at the Site. As of the date of the PRP Report in 1985, the Medleys were believed to have very limited resources. In particular, the PRP Report states at page 16 that the total depreciated value of Clyde Medley's business was \$35,100 in 1984. A Memorandum from Region IV to Thomas L. Adams, Assistant Administrator, Office of Enforcement and Compliance Monitoring, dated December 8, 1987 further states that "in June 1986, an evaluation of the Medleys' tax returns and financial conditions indicated that these defendants are judgment proof. Ralph Medley owns only his own home and Clyde Medley has transferred most of this personal and real property to other members of his family." A Region IV civil investigator is currently conducting an investigation of the financial status of each of the Medley family members.

B. The Generators

1. ABCO Industries, Inc.

The PRP Report dated June 21, 1985 identifies ABCO, Industries, Inc. as a South Carolina corporation located at Railroad Road, Roebuck, South Carolina 29376. However, the South Carolina Secretary of State's Office notified EPA Region IV on February 22, 1991 that ABCO had become a South Carolina limited partnership on December 16, 1986. The partnership is still at the location described above and has as its registered agent A. B. Bullington, Jr., the son of the former Chairman of the Board of the corporation. It is likely that the limited partnership simply succeeded to the assets and liabilities of the former corporation. According to the Secretary of State, the former corporation no longer exists in South Carolina.

EPA's 104(e) information request letter dated October 25, 1983 indicated that "drums bearing your company's labels and markings were discovered on the Medley Site." Region IV was unable to locate any records or photographs of the drums, but has contacted the contractor which performed the removal action to determine if the contractor retained copies of any photographs or drum logs showing such labels. In response to EPA's allegation in the 104(e) letter, AECO explained that it sold drums of its product throughout the area, and its customers may have reused its drums.

ABCO responded to EPA's 104(e) information request letter in a letter dated November 13, 1983 by denying that it shipped hazardous substances to the Site. ABCO did state, however, that "While ABCO Industries never had any agreement or contract with those operating the Medley site, according to an employee-truck driver, a few drums of nonhazardous substances may have been delivered to the site in the early 1970s." ABCO then claims that the substances transported and disposed of at the Site would have been acrylic polymers in emulsion form containing 75% water. ABCO maintains that such substances were not hazardous waste.

In a statement written by Clyde Medley and sent to Region IV by his attorney on January 14, 1985, Mr. Medley maintains that ABCO Industries of Roebuck, S.C. sent drums to the Medley Farm Site. Mr. Medley confirmed his recollection that ABCO Industries of Roebuck, S.C. had sent drums to the Site in his deposition taken in connection with the cost recovery litigation on April 15, 1986. At page 34-35 of the deposition transcript, Mr. Medley responded to questions from Mr. Mann, counsel for Milliken & Company as follows:

- Q. And in your statement which is Exhibit No. 2 [the statement referred to above], you go into great detail about the, how the Medley farm site was set up and who you did business with, right?

- A. Right.
Q. And is this statement correct? Have you looked at it recently?
A. dYes, sir.....
Q. And in that statement you named ABCO Chemical Company.
A. Yes, sir.

Region IV believes that this evidence is sufficient to name ABCO Industries, Ltd. as a PRP. However, at a trial on the issue of liability, some doubt exists that the substances sent to the Medley Farm Site were hazardous waste and Region IV has yet to discover evidence showing that the materials were in fact hazardous waste.

2. BASF

The PRP Report dated June 21, 1985 does not identify BASF as a PRP.

Region IV's files do not contain any 104(e) information request letters or general notice letters to BASF. The files also do not contain any responses or correspondence from BASF to the Agency.

Currently, Region IV's evidence against BASF consists of deposition testimony by Clyde L. Medley of Roebuck taken in connection with the cost recovery litigation on April 15, 1986. At page 36 of the deposition transcript, Mr. Medley stated that "Yes, sir. BASF (Wyandotte) put a good many [drums] down there." However, Mr. Medley had not identified BASF as a generator at the Site in his previous written statement (see Attachment ____). When asked why in the deposition on p. 37, he responded "That's just something I overlooked. I mean, you can't be perfect."

BASF is also implicated as a generator at the Site in a letter sent by counsel for the Medleys to DHEC dated August 18, 1975 (see Exhibit ____.) in order to enhance the Medleys' short-lived attempt to establish a solid waste disposal site at what is commonly referred to as the "Love Springs" site. Essentially, as part of the Medleys' permit application to the State, counsel for the Medleys prepared in the letter a list of expected customers, including BASF, who would use the disposal facility. When asked in his deposition "But customers from the Ralph Medley disposal business were used for the purpose of getting a permit for the Love Springs site, is that a fair statement?," Mr. Medley responded that "Well, now they were sent [in the letter], you know, to get approved for it." The implication throughout the deposition is that the Medleys listed their current customers when sending the letter to the State to request permission to open the new landfill. However, at a later point in the deposition, Mr. Medley indicates that one of the companies listed might have been merely a potential customer.

Region IV believes that there is sufficient evidence to name BASF as a PRP. However, at a trial on the issue of liability, there would be some risk that the adjudicator would find the evidence inconclusive.

3. Charles S. Tanner Co./National Starch and Chemical Co.